Supreme Court, U.S.
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CLERK

89-1188

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER, 1989 TERM

JAMES C. KELLY,

Petitioner,

versus

S. RAY GILL, ETC., ET AL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FIFTH DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA

APPENDIX

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IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 1989

JAMES C. KELLY,

APPELLANT,

V. CASE NO. 88-1739

S. RAY GILL, etc., et al.,

APPELLEE.

Opinion filed June 15, 1989

Appeal from the Circuit Court for Marion County, Wallace E. Sturgis, Jr., Judge.

Mark D. Shelnutt of Mark D. Shelnutt, P.A., Ocala, for Appellant.

Robert A. Butterworth, Attorney General and Deborah J. Stephens, Assistant Attorney General, Tallahassee, for Appellees.

COBB,J.

The main issue on this appeal is whether the appellant (James Kelly), a former investigator for the state attorney's office was wrongfully discharged as a result of being denied the benefits of the law enforcement officers bill of rights pursuant to

section 112.531, et seq., Florida Statutes (1985).1

Kelly was employed as a criminal investigator for the state attorney's office for a period of 18 1/2 years. On December 26, 1984, Ray Gill, the incoming state attorney for the Fifth Judicial Circuit, telephoned Kelly and advised him that as of December 31, 1984, Kelly would be terminated from his position. No other notice or reasons were given to Kelly, nor was there any pre-termination hearing. The official notice of termination listed Kelly as having been "laid off." Approximately two years later, Kelly filed a Complaint against Gill in his official capacity as state attorney. Kelly alleged that the office of the state attorney was an "employing agency" and that Kelly was a "law enforcement officer," so that a

property right was created under the law enforcement officers bill of rights.

That trial court granted Gill's motion for summary judgment in regard to Kelly's claim for wrongful termination finding that no action could be maintained under a contract or tort theory. Kelly's motion for summary judgment was granted to the extent that the trial court found that section 27.255(1), (3), Florida Statutes (1985) 2 applied fully to investigators employed by the State Attorney and thus, section 112, 531, et seq. was applicable to Kelly also. The trial court added that even though Kelly fell within the purview of the law enforcement officers bill of rights, the particular sections provided no remedies for damages or reinstatement, but only injunctive relief which would require Gill to provide Kelly with

written reasons for the latter's discharge.

Kelly filed a timely notice of appeal and contends that the trial court erred in granting Gill's motion for summary judgment as to Kelly's claim for wrongful termination regarding due process violations. On cross-appeal, Gill urges that the trial court erred in holding that Kelly was covered by the law enforcement officers bill of rights and in granting injunctive relief. In the absence of a specific statutes granting a property interest, a contract of employment (implied or express) which is indefinite as to term of employment is terminable at the will of either party without cause and an action for wrongful discharge will not lie. Smith v. Piezo Technology and Professional Administrators, 427 So2d 182 (Fla. 1983);

Gibbs v. H.J. Heinz Company,536 So.2d 370 (Fla. 5th DCA 1988); Grappoine v. City of Miami Beach, 495 So.2d 838 (Fla. 3d DCA 1986); McConnell v Eastern Airlines, Inc., 499 So.2d 68 (Fla. 3d DCA 1986); Muller v. Streomberg, Calson Corporation, 427 So.2d 266 (Fla. 2d DCA 1983); Roy Jorgesen Associates, Inc. v. Deschenes, 409 So.2d 1188 (Fla. 4th DCA 1982). There is no cause of action based in common law tort for wrongful dismissal such as negligence, malice, or retaliation. 3 It is also clear that breach of an obligation of good faith and fair dealing has not been recognized in Florida as a viable cause of action, at least where a wrongful dismissal is claimed. Mueller at 269.

In the instant case, Kelly has shown no express or implied contract which would remove this factual situation from

the "at will" doctrine and contrary to what is alleged on appeal, an individual cannot be wrongfully discharged under an at will doctrine solely because that individual was denied some limited statutory procedural right (i.e.,§112.532(4), Fla. Stat. (1985)). A statute cannot create a property interest unless it lists the specific grounds for discharge or states that an employee can only dismissed for just cause. Ragucci v. City of Plantation, 407 So.2d 932 (Fla. 4th DCA 1981). A statutory provision that requires minimal procedural steps prior to termination will not in and of itself create a property interest in continued employment. Zeigler v. Jackson, 716 F2d 847 (11th Cir. 1983). Even assuming that section 112.532 (4) affords a law enforcement officer procedural rights, theses

"reasons" do not invoke the requirements of "just cause" or the requirement of specific grounds for termination.

While it is at least arguable that section 112.532(4) offers at least de iminimis procedural rights to a "law enforcement officer, "Kelly cannot claim a statutory violation because the benefits of section 112.531, et seq., as they relate to dismissal are not available to him. Section 27.255(3), Florida Statutes (1985) states that an investigator "appointed" pursuant to the provisions of section 27.251 (i.e., sheriff's deputy on full-time basis as an investigator), has the same rights afforded other law enforcement officers when in the performance of any of the powers, duties, or functions authorized by law. Both parties acknowledge, as does the trial court, that deputy sheriffs are appointees of a

constitutional office and as such, are terminable at will and not entitled to the protections of section 112.531, et seq., Florida Statutes. Under the reasoning of the trial court, to allow investigators the benefits of sections 112.532 and 112.534, pursuant to section 27.255(3), would also allow appointed deputy sheriffs, as investigators, those same rights. This would clearly be inconsistent; by becoming an appointee of the state attorney's office, a deputy sheriff would have greater rights than if he had remained solely with his primary employer. 4 Evans v. Hardcastle, 339.So.2d 1150 (Fla. 2nd DCA 1976). As a result, even though under section 27.255(1), an investigator is called a "law enforcement officer," this does not mean that a state attorney's investigator has the benefits of section 112.531, et seq.

In light of the above discussion, Kelly also has no action based on an

alleged constitutional due process violation because no vested property interest arises from either contact or statutes. 5 Accordingly, the final judgment of the trial court granting summary judgment in favor of Gill is affirmed. That portion of the final judgment which grants summary judgment in favor of Kelly regarding injunctive relief is reversed. 6 Upon remand the trial court will file an appropriate order of final summary Judgment consistent with this opinion.

AFFIRMED in part, REVERSED in part, and REMANDED.

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1 Part VI, section 112.531(1), (3) defines "Law enforcement officer" and "employment agency." Section 112.532(1) deals with rights of officers which under investigation as the result of an outside complainant. Section 112.532(2) establishes a review board to consider these outside complaints. Section 112.532(3) gives an officer the right to

bring a civil suit against another. Section 112.532(4), (5) requires notice of disciplinary action as well as a prohibition against disciplinary action as a result of an officer exercising his rights under Part VI.

Section 112.533 establishes a system for the receipt and processing of outside complaints made against an officer. Section 112.534 specifies that if an agency fails to comply with Part VI, an injured officer may apply to the circuit court for an injunction to compel performance.

2
Section 27.255(1) states in part:

> Each investigator employed on a full-time basis by a state attorney and such special investigator appointed by the state attorney pursuant to the provision of section 27.2451 is hereby declared to be a law enforcement officer of the state...

Section 27.;255(3) states:

> In the performance for any of the powers, duties, and functions authorized by law or this section, investigators employed by a state attorney or appointed pursuant to the provisions of section 27.251 shall have the same rights, protections, and immunities afforded other peach or law enforcement officers.

Section 25.251 merely authorized the state attorney of each judicial circuit to employ any municipal or county police officer or sheriffs deputy on a full-time basis as an investigator for the state attorney's office.

3
See Smith at 184; Hartley v. Ocean Reef Club, Inc., 476 So.2d 1327, 1330 (Fla. 2d DCA 1985) (the legislature has not created a statutory action for wrongful discharge in general and no common law cause of action for retaliatory or wrongful discharge exists in Florida).

4
Also note that under section 111.065, Florida Statutes (1985), a deputy sheriff is defined as a "law enforcement officer" even though section 112.531, et seq. is not available to the deputy sheriff. Compare the definitions of "law enforcement officer" in sections 112.19 and 112.1904.

5
In Migliore v. City of Lauderhill, 431 So.2d 986 (Fla. 1983), the Florida Supreme Court held that complaint review board, a authorized by section 112.532(2), were not created to review disciplinary actions against police officers which arose from an internal source. While not necessary to decide this appeal, it would appear that all of part VI, section 112.531, et seq., deals specifically with investigations, complaints, and disciplinary action as a result of claims made against an officer by persons outside the agency which employs him.

6
In addition to the reasons given herein, see Migliore v. City of Lauderhill, 415 So.2d 62, 64, (Fla. 4th DCA 1982) (neither mandamus nor injunctive relief is available to require the performance of a futile act.)

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR MARION COUNTY.

JAMES C. KELLY,

Plaintiff,

V.

Case No. 86-44441-CA-A

S. RAY GILL, etc., et al.,

Defendant.
_____/

O R D E R

This cause, having come before the Court on the Motions for Summary Judgment filed by both parties, and the Court having reviewed the memoranda of law submitted and having heard argument of counsel, does hereby make the following findings of fact and conclusions of law:

FACTS

The undisputed facts of this case. are that:

1. Plaintiff was at all times material, a criminal investigator for the Defendant, State Attorney's Office.

2. Plaintiff was discharged from that position effective December 31, 1984, by letter from Defendant Gill dated December 26, 1984.

3. Aside from the above-referenced termination letter, Plaintiff received no notice; was given no reason; and was not afforded any hearing, pursuant to said dismissal.

ANALYSIS

Plaintiff contends he was a "law enforcement officer" as that term is defined under Florida Statutes; is entitled to certain procedural due process rights prior to termination; was not afforded those rights prior to termination; and seeks injunctive relief and damages.

Defendants contend that a State Attorney investigator is analogous to a deputy Sheriff; is a political appointee

employed at will; and can be discharged at any time without any procedural due process rights. Additionally, Defendants contend that they are sovereignly immune from suit on the grounds that they are not "employers" of "law enforcement officers"; no tort has been committed under F.S. §768.28 and Federal civil rights legislation cannot be enforced against state officials in state court.

Under Florida Statutes §27.255 (1), (3), investigators employed by the State Attorney's office are law enforcement officers of the State and "shall have the same rights, protections and immunities afforded other law enforcement officers." Plaintiff argues that those privileges extend to the protection of F.S. §112.531 et. seq., commonly known as the Law Enforcement Officers Bill of Rights. This Court agrees.

Defendants correctly point out that deputy Sheriffs have been held by numerous courts to be "appointees" of a constitutional officer (the Sheriff); terminable at will and not entitled to the protection of F.S. §112.531. They argue, by analogy, that State Attorney investigators are "appointees"; terminable at will and entitled to no benefits. The Court does not agree. Plaintiff is defined as an employee by F.S. §27.255. Although the Court sees an analogy between assistant State Attorneys and deputy Sheriffs (both being an appointed extension of the constitutional officer), we cannot see how staff employees, hired to facilitate the exercise of the duties can be labeled "appointees".

Defendants next argue that the State attorney's Office in not an "employer".

The language of F.S. §27.25(1), and §943.10 (4), 216.011 (jj) are to the contrary.

The Florida courts have dealt with the remedies that are available under §112.534 and have concluded that it "...is no more than a vehicle for enforcing the procedures established in the proceeding section of this part of the statute; it is not a vehicle for the restoration of substitutive rights...". Migliore v. Lauderhill, 415.So.2d 62 (4th DCA 1982). The courts have also held that under §112.534 there is no subject matter jurisdiction to entertain an action for damages. Miami v. Cosgrove, 516 So.2d 1125 (3rd DCA 1987). Thus even thought the Plaintiff herein falls under the purview of F.S.§112.531, et seq., it provides no remedies for damages or reinstatement as sought, but only

injunctive relief to prevent Defendant from further or continuing violations of the provisions therein.

Plaintiff nest argues that they are entitled to certain due process rights under 42 U.S.C.§1983 or the Florida Constitution by virtue of having a "property right" in their employment. Firstly, Defendants enjoy sovereign immunity from Plaintiff's attempt to enforce federal civil rights remedies in state court. Hill v. Department of Corrections, 513 So.2d 129 (Fla 1987). Plaintiff relies on Board of Regents v Roth, 408 U.S. 564; 92 S.CT. 2701 (1972), for the creation of a property right. However, unlike Roth, Plaintiff can point to no state statutes under which they now have, or could ever attain, a property interest in their jobs as State Attorney's Office investigators.

Moreover, F.S.§110.205(2)(c) specifically excludes judicial officers and employees form the career civil service status. This Court has already found Plaintiff to be a judicial employee.

Lastly, Plaintiff argues that Defendant, by violating the notice provision of F.S. §112.534 and §943,39, have committed a compensible tort for which Defendant have waived immunity under F.S.§768.28. Since the law as it stands in Florida does not give Plaintiff either a property right or a procedural due process by statute, then no duty exists from which a breach could occur.

For the foregoing reasons it is, hereby

ORDERED AND ADJUDGED:

1. Defendants' Motion for Summary Judgment as to Plaintiff's claim under 42.U.S.C. §1983 is GRANTED.

2. Defendants' Motion for Summary Judgment as to Plaintiff's claim for Wrongfull termination is GRANTED.

3. Defendants' Motion for Summary Judgment as to Plaintiff's claim for attorney's fees is GRANTED.

4. Plaintiff's Motion for Summary Judgment as to Plaintiff's claim for Injunctive Relief is GRANTED; Defendant, Ray Gill, shall provide to Plaintiff in writing, reasons for the discharge of Plaintiff within 10 days of this order.

DONE AND ORDERED in Chambers at Ocala, Marion County, Florida, this 28th day of July, 1988.

WALLACE E. STURGIS, JR.

SUPREME COURT OF FLORIDA
Tuesday, October 24, 1989

JAMES C. KELLY,

Petitioner, Case No. 74,400
.. District Court of Appeal
v. Fifth District
No. 88-1739
S. RAY GILL, ETC., ET AL.,

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under article V, Section 3 (b), Florida Constitution (1980-), and the Court having determined that is should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P.1 9.330(d).

OVERTON, acting C.J, SHAW, BARKETT and dissents

POLICEMAN'S BILL OF RIGHTS
FLORIDA STATUTES §112.531 et seq (1985)

PART VI
112.531 Definitions- As used in this act:

(1) "Law enforcement officer" means any person other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws for this state.

(2) "Correctional officer" means any person, other than a superintendent, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; however, the term "correctional officer" does not include an secretarial, clerical, or professionally trained personnel.

(3) "Employing agency" means any municipality or the state or any political subdivision thereof which employs law enforcement officers or correctional officers as defined in this section.

112.532 Law enforcement officer's and correctional officers' rights- All law enforcement officers and correctional officers employed by any employing agency shall have the following rights and privileges:

(1) RIGHTS OF LAW ENFORCEMENT OFFICER AN CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION- Whenever a law

enforcement officer or correctional officer is under investigation and subject to interrogation by members of his agency for any reason which could lead to disciplinary action,m demotion, or dismissal, such interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, prrferably at a time when the law enforcement officer or correctional officer is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required.

(b) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct, police unit,l or correctional unit in which the incident allegedly occurred, as designated by the investigation officer or agency.

(c) The law enforcement officer or correctional officer under investigation shall be informed or the rank, name, and command of the officer in charge of the investigation , the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator at any one time.

(d) The law enforcement officer or correctional officer under investigation shall be informed of the nature of the investigation prior to any interrogation, and he shall be informed of the name of all complainants.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities

and rest periods as are reasonable necessary.

(f) The law enforcement officer or correction office under interrogation shall not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. No promise or reward shall be made as an inducement to answer any questions.

(g) The formal interrogation of a law enforcement officer or correctional office, including all recess periods, shall be recorded, and there shall be unrecorded questions or statements.

(h) If the law enforcement officer or correctional officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

(i) at the request of any law enforcement officer or correctional officer under investigation, he shall have the right to be represented by counsel or any other representative of his choice, who shall be present at all times during such interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement service.

(2) COMPLAINT REVIEW BOARDS- A complaint review board shall be composed of three members: One member selected by the chief administrator of the agency or unit; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies or units having more than 100 law enforcement officers or correctional officers shall utilize a five-member board, with two members being selected by

the administrator, two members being selected by the aggrieved officer, and the fifth member being selected by the other four members, The board members shall be law enforcement officers or correctional officer selected from any state, county, or municipal agency within the county. There shall be a board for law enforcement officers and a board for correctional officer whose members shall be from the same discipline as the aggrieved officer.

(3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR CORRECTIONAL OFFICERS- Every law enforcement officer or correctional officer shall have the right to bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered during the performance of the officer's official duties or for abridgment of the officer's civil rights arising out of the officer's performance of official duties.

(4) NOTICE OF DISCIPLINARY ACTION- No dismissal, demotion, transfer, reassignment, or other personnel action which might result in loss of pay or benefits or which might otherwise be considered a punitive measure shall be taken against any law enforcement officer or correctional officer unless such law enforcement officer or correctional officer is notified of the action and the reason or reasons therefor prior to the effective date of such action.

(5) RETALIATION FOR EXERCISING RIGHTS- No law enforcement officer or correctional officer shall be discharged;

disciplined, demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to him employment or be threatened with any such treatment by reason of his exercise of the rights granted by this part.

112.533 Receipt and processing of complaints-

(1) Every agency employing law enforcement officers or correctional officer shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such employing agency from any person.

(2) (a) A complaint filed against a law enforcement officer, including a deputy sheriff, or correctional office with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of such complaint shall be confidential until the conclusion of the internal investigation or at such time that the investigation ceases to be active without a find relating to probable cause to proceed with disciplinary action or file charges against the officer, a statement to that effect signed by the agency heard or his designee and the responsible investigating official shall be attached to the complaint; and the complaint and all such information shall be open thereafter to inspection pursuant to chapter 119. If the internal investigation is concluded with the finding that there is probable cause to proceed with disciplinary action or file charges, the complaint and all such

information shall be open thereafter to inspection pursuant to chapter 119. If the investigation ceases to be active without a finding relating to probable cause, the complaint and all such information shall be open thereafter to inspection pursuant to chapter 119.

(b) This subsection does not apply to any public record which is exempt from public record which is exempt from public disclosure pursuant to §119.07(3). For the purposes of this subsection, an investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be mad e in the foreseeable future. An investigation shall be presumed to be inactive if no finding is made within 60 days after the complaint is filed.

(c) Nothwithstanding other provision of this section, the complaint and information shall be available to law enforcement agencies and state attorneys in the conduct of a lawful criminal investigation.

(3) Any persons who willfully discloses, or permits to be disclosed, his intention to file a complaint; the existence or contents of a complaint which has been filed with an agency; or any document, action, or proceeding in connection with a confidential internal investigation of an agency, before such complaint, document, action, or proceeding becomes a public record as provided herein is guilty of a misdemeanor of the first degree, punishable as provided in §775.082 OR §775.083.

112.534 Failure to comply- If any agency employing law enforcement officers or

correctional officers fails to comply with the requirements of this part, a law enforcement officer or correctional officer employed by such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such employing agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provision of this party and to compel the performance of the duties imposed by this part.

27.251 Special organized crime investigators -

(1) The state attorney of each judicial circuit is authorized to employ any municipal or county police officer or sheriff's deputy on a full-time basis as an investigator for the state attorney's office with full powers of arrest throughout his judicial circuit provided such investigator serves on a special task force to investigate matters involving orgainized crime, and, provided further, that the salary of such municipal or county police officer or sheriff by which the investigator is principally employed, and with consent of the county, sheriff, or municipality. The arrest powers granted herein shall be exercised only in furtherance of the conduct of the business of the special task force to which such municipal or county police officer or sheriff's deputy as assigned by the said state attorney.
(2) Each state attorney shall, on or before January 1 of each year, submit a report to the President of the senate and Speaker of the House, which report shall specify the number of municipal police

officers and sheriff's deputies which have been employed by him during the preceding fiscal year pursuant to this section and an estimate of the number of such officers and deputies which will be employed by him during the current fiscal year.

27.255 Investigators; authority to arrest, qualifications, rights, immunities, bond, and oath-

(1) Each investigator employed on a full-time basis by a state attorney and each special investigator appointed by the state attorney pursuant to the provision pointed by the state attorney pursuant to the provisions of §27.251 is hereby declared to be a law enforcement officer of the state and conservator of the peach, under the direction and control of the state attorney who employs him, with full powers of arrest, in accordance with the laws of this state. Such investigator may arrest any person for violation of state law or applicable county or city ordinances when such violation occurs within the boundaries of the judicial circuit served by the state attorney employing the investigator, except that arrests may be made out of said judicial circuit when hot pursuit originates within said judicial circuit. Such investigator shall, within the boundaries of the judicial circuit served by such state attorney, have full authority to serve any arrest warrant, search warranty, witness subpoena, capias, or court order issued by any court or judge within such judicial circuit in a criminal case, or in connection with a criminal investigation, when the same is directed

to him. He may carry weapons on or about his person in the same manner as other law enforcement officers.

(2) All investigators employed by a state attorney or appointed pursuant to the provision of §27.251 shall meet the minimum standards established by the Criminal Justice Standards and Training Commission of the Department of Law Enforcement for the employment and training of law enforcement officers under chapter 943, except that investigators employed by a state attorney on July 1, 1974, shall not be required to meet such standards.

(3) In the performance of any of the powers, duties and functions authorized by law or this section, investigators employed by a state attorney appointed pursuant to the provision of §27.251 shall have the same rights, protections, and immunities afforded other peace or law enforcement officers.

(4) Any full-time investigator employed by the state attorney and any special investigator appointed by the state attorney pursuant to the provision of §27.251 shall, before entering into the performance of his duties, take and file the oath as prescribed in §5, Art. II of the State constitution and enter in to a good and sufficient bond with a surety company authorized to do business in this state as surety thereon, conditioned on the faithful performance of his duties and payable to the Governor and his successors in the penal sum of $5,000 00.

FLORIDA STATUTES §57.105 (1985)

57.105 Attorney's fees - The court shall award a reasonable attorney's fee to the prevailing party in any civil action in which the Court finds that there was a complete absence of justiciable issue of either law or fact raised by the losing party.

FLORIDA STATUTES § 943.139 (1985)

943.139 Notice of employment, appointment or termination; response by the officer; duty of commission-

(1) An employing agency shall immediately notify the commission in writing, on a form adopted by the commission, of the employment , appointment, or termination of employment or appointment of any officer.

(2) In a case of termination, the employing agency shall notify the commission and the officer, in writing, of the termination, setting forth in detail in the facts and reasons for such termination. If the officer is terminated for his failure to comply with the provision of §943.13, the notice shall so specify. Any officer who has been terminated shall be permitted to respond to the termination, in writing, to the commission, setting forth the facts and reasons for the termination as he understands them.

FLORIDA STATUTES §110.205

110.205 Career service; exemptions-

(1) CAREER POSITIONS- The career service to which this party applies includes all positions not specifically exempted by this part, any other

provision of the Florida Statutes to the contrary nothwithstanding.

(2) EXEMPT POSITIONS- The exempt positions which are not covered by this party include the following, provided no position, except for positions established for a limited period of time pursuant to paragraph (i), shall be exempted if the position reports to a position in the career service.
(c) Members of boards and commissions, however selected. the department shall set the salary of these positions unless otherwise fixed by law.
(k) All officers and employees of the judicial branch. The department shall set the salary of these positions, otherwise fixed by law.

FLORIDA STATUTES §943.10 (3) and (4) (1985)

943.10 Definitions; ss. 943.085-943.255- The following words and phrases as used in ss. 943.085-943.255 are defined as follows:

(3) "Employing agency" means any agency or unit of governmental or any municipality or the state or any political subdivision thereof which has constitutional or statutory authority to employ or appoint persons as officers .

(4) "Commission" means the Criminal Justice Standards and Training Commission.

FLORIDA STATUTES §27.25(1) (1985)

27.25 State attorney authorized to employ personnel; funding formula-

(1) The state attorney of each judicial circuit is authorized to employ and establish in such number as he shall determine assistant state attorneys, investigators, and clerical, secretarial and other personnel, who shall be paid form funds appropriated for that purpose. The state attorneys of all judicial circuit shall jointly develop a coordinated classification and pay plan which shall be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the President of Senate, and the office of the Speaker of the House for Representatives. Such plan shall be developed in accordance with policies and procedures of the Executive Office of the Governor established pursuant to §216.181

FLORIDA STATUTES §216.011 (1) (jj) (1985)

216.011 Definitions-

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budges, each of the following terms has the meaning indicated:
(jj) "State agency" or "agency" means any official,m officer, commission, board, authority, council, committee,k or department of the executive branch, or the judicial branch, as herein defined, of the state government.

ARTICLE VI, UNITED STATES CONSTITUTION

ARTICLE VI

This constitution, and the laws of the United States which shall be made in Pursuance therefor: and all Treaties

made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

FIFTH AMENDMENT,UNITED STATES CONSTITUTION AND FOURTEENTH AMENDMENT UNITED STATES CONSTITUTION

FIFTH AMENDMENT

NO persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, in in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws.

ARTICLE VIII, SECTION 1 (A) AND 6 (D)
FLORIDA CONSTITUTION

SECTION 1 - Counties-
(g) CHARTER GOVERNMENT. counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

SECTION 6- Schedule to article VIII-
(d) ORDINANCES. Local laws relating only to unincorporated areas of a county on the effective date of this article may be amended or repealed by county ordinance.

FLORIDA STATUTES §768.28 (1) and (2)
(1985)

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitation; exclusions.-

(1) In accordance with §13, Art X, State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state

or its agencies or subdivisions for injury or loss or property, personal injury, or death caused by the negligent or wrongful act or omission of any employee o the agency or subdivision while acting within the scope of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

(2) as used in this act, "state agencies or subdivisions" include the execution departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state; counties and municipalities; and corporations primarily action as instrumentalities or agencies of the state, counties or municipalities.